

# COVINGTON

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May 10, 2019

The Honorable Charles E. Grassley  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Chairman Grassley:

On behalf of our client, the United States Olympic Committee, this letter and the accompanying materials respond to your April 23, 2019, letter to Sarah Hirshland, the CEO of the United States Olympic Committee. This letter seeks to address your questions regarding the Olympic Committee's decision to seek revocation of USA Gymnastics' recognition as the national governing body for Olympic gymnastics in the United States and the effect of USA Gymnastics' bankruptcy filing on that process. Further, as requested by your staff in a recent telephone call, this letter provides additional information regarding the process related to the stay of the revocation proceedings by the hearing panel, expanding on the information contained in our February 4, 2019, letter on this and related topics.

Preliminarily, it is extremely important to stress that the stay of the revocation proceeding, which is governed by a legal process and related considerations as described below, does not *in any way* diminish the Olympic Committee's commitment to overseeing a cultural change within Olympic sports in the United States, including specifically at USA Gymnastics. Moreover, Ms. Hirshland stands strongly by the statements in her November 5, 2018, open letter to gymnasts. Gymnasts in the United States do indeed "deserve better" from USA Gymnastics than the failures that were cited in Ms. Hirshland's November 5, 2018, complaint.<sup>1</sup>

The Olympic Committee has implemented broad, systemic, and far-reaching reforms and initiatives over the past year to build a cultural change in Olympic sports. Those initiative are summarized in our February 4, 2019, letter and generally relate to (1) increased efforts to support of the Center for SafeSport and athlete safety programs, (2) efforts, both formal and informal, to increase the voices of the athletes within the Olympic and Paralympic communities, (3) a thorough governance review to inform the Olympic Committee's engagement with national governing bodies and athletes, and (4) issues specific to USA Gymnastics.<sup>2</sup>

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<sup>1</sup> A copy of the complaint is attached for your reference.

<sup>2</sup> Attached is a document that provides an update and summary of these efforts.

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As you know, Ms. Hirshland filed a complaint seeking revocation of USA Gymnastics' recognition on November 5, 2018.<sup>3</sup> Shortly thereafter, she selected an independent hearing panel to consider the complaint, and the Olympic Committee provided independent counsel to assist the hearing panel in its work. Additional details regarding the hearing panel and its members are contained in our February 4, 2019, letter.

USA Gymnastics filed for bankruptcy on December 5, 2018.<sup>4</sup> On that date, USA Gymnastics submitted a notice to the hearing panel, describing the automatic stay provisions of section 362 the Bankruptcy Code.<sup>5</sup> On January 19, 2019, counsel to the hearing panel wrote to the parties regarding the hearing process. The letter stated the following:<sup>6</sup>

The Panel had anticipated moving forward with an expeditious and timely Hearing process, giving each party the ability to fully provide their evidence and arguments. On December 5, 2018, however, USA Gymnastics filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. The Panel is aware that, with the filing of the petition, an automatic stay went into effect with respect to USA Gymnastics, pursuant to Section 362 of the Bankruptcy Code (the "Stay").

The Panel makes no determination as to the applicability of the Stay to the Hearing or the Section 8 process. Absent more legal clarity, however, the Panel cannot proceed with the Hearing. If either of the parties wishes to move forward, please contact my office – and the other party – to indicate as such, along with your legal arguments as to why the Hearing process should be allowed to commence, given the Stay.

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<sup>3</sup> The Olympic Committee is unable to comment on the statement reportedly made by a former USA Gymnastics official regarding the Olympic Committee's decision to seek revocation of USA Gymnastics' recognition as a national governing body. The Olympic Committee's reasons for seeking revocation are addressed in the complaint and Ms. Hirshland's contemporaneous statements.

<sup>4</sup> The Olympic Committee is unable to comment on USA Gymnastics' statements regarding its financial status. Based on information available to the Olympic Committee, including through the bankruptcy proceeding, the Olympic Committee believes that USA Gymnastics faces considerable financial uncertainty, primarily because of pending claims in litigation. See Complaint ¶ 18.

<sup>5</sup> A copy of USA Gymnastics' notice to the hearing panel is attached.

<sup>6</sup> A copy of this letter is attached.

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On January 11, 2019, the Olympic Committee responded to the hearing panel's counsel. The letter stated the following:<sup>7</sup>

The USOC is not requesting that the Panel take any action with respect to the Section 8 proceedings involving USA Gymnastics at this time. Please note, however, that this stance should not be regarded by the Panel as a concession on the part of the USOC that these proceedings are implicated by the automatic stay, and the USOC expressly reserves the right to request that the Section 8 proceedings resume at a future date. In such an event, the USOC will act in accordance with the procedure set forth in your letter.

As noted in our February 4, 2019, letter, the Olympic Committee took this position out of respect for the independence of the hearing panel and in deference to the bankruptcy court proceedings. Your letter requested additional information in that regard.

First, the Olympic Committee's bylaws require the CEO to appoint "an independent hearing panel" to hear a complaint seeking revocation of recognition of a national governing body.<sup>8</sup> Consistent with this obligation, the Olympic Committee provided the hearing panel with independent counsel to assist its efforts. As a result, the legal conclusions and actions of the hearing panel are its alone to make.

Second, in the case of USA Gymnastics, considerations related to the bankruptcy court proceedings, particularly as they relate to the interests of victims and survivors seeking compensation from USA Gymnastics, are significantly important to the Olympic Committee's position not to request that the hearing panel recommence the proceedings, or seek leave from the bankruptcy court to do so.

As noted by the hearing panel's counsel, there does not appear to be directly applicable case law regarding the application of the Bankruptcy Code's automatic stay provision to a national governing body revocation proceeding. In general, the Code's automatic stay provision bars the commencement or continuation of any "judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced" before the start of bankruptcy and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."<sup>9</sup> Even without precedent directly on point regarding national governing body recognition status, bankruptcy courts take an

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<sup>7</sup> A copy of this letter is attached.

<sup>8</sup> See U.S. Olympic Committee, Bylaws of the U.S. Olympic Committee, § 8.20.1, *available at* [www.teamusa.org/Footer/Legal/Governance-Documents](http://www.teamusa.org/Footer/Legal/Governance-Documents). Additionally, "[t]he hearing panel shall not include any individual having a direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding." *Id.*

<sup>9</sup> 11 U.S.C. § 362(a)(1) & (3).

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expansive view of the property of the debtor's estate, including in situations analogous to the revocation of recognition.<sup>10</sup>

Seeking to recommence the hearing panel's proceedings therefore would, at the very least, require litigation at the bankruptcy court regarding the applicability of the automatic stay provision. In the Olympic Committee's view, such an action could potentially be disruptive to the bankruptcy process, particularly as it relates to the current efforts to provide compensation to the victims and survivors of abuse. Specifically, since USA Gymnastics filed for bankruptcy protection, the victims and survivors, and other litigants, including the Olympic Committee, have sought to expand the stay applicable to the various cases in an effort to provide an opportunity for mediation and global resolution of the needs of victims and survivors.<sup>11</sup>

Importantly, the Olympic Committee is participating in this process. On March 26, 2019, in response to requests from the plaintiffs and defendants in the litigation against USA Gymnastics, the Olympic Committee notified the parties that it would participate in the mediation discussions ongoing in an effort to resolve the cases. As conveyed to your staff at that time, Olympic Committee welcomes the opportunity to work with the parties to address the needs of the victims and survivors.<sup>12</sup> The Olympic Committee expects to participate in the next set of mediation discussions, which it believes are likely to take place this summer.

In short, in an effort to provide an opportunity for a resolution that addresses the needs of the victims and survivors, along with its respect for the hearing panel's independence, the Olympic Committee has consistently declined to take a position on the hearing panel stay or seek to recommence the revocation process.<sup>13</sup> The Olympic Committee recognizes that, with the

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<sup>10</sup> See, e.g., *In re Lehigh Valley Professional Sports Clubs, Inc.*, No. 00-11296DWS, 2001 WL 1188409, at \*4 (Bankr. E.D. Pa.) ("The scope of this statutory provision is broad and intended to include all kinds of property, both tangible and intangible. . . . [T]he membership interest [in a sports league] is intangible property. . . . It is this property of the estate as to which a stay violation has occurred.")

<sup>11</sup> Although the automatic stay provision of the Bankruptcy Code applies to litigation with respect to USA Gymnastics, it does not automatically apply to litigation against other parties. In April 2018, the Bankruptcy Court ordered all litigation stayed with the consent of substantially all of the parties, including the victims and survivors and the Sexual Abuse Survivors Committee. Copies of these orders are attached.

<sup>12</sup> E-mail from Brian D. Smith to Dario Camacho, Evelyn Fortier, DeLisa Ragsdale, David Berick, and Ian Nicholson (Mar. 27, 2019).

<sup>13</sup> To the extent that an early public statement by a former spokesperson of the Olympic Committee incorrectly suggested otherwise, the Olympic Committee quickly corrected the record. See, e.g., Nancy Armour, Rachel Axon, and Tim Evans, *USA Gymnastics Files for Bankruptcy, a Move Related to Larry Nassar's Sexual Abuse Lawsuits*, USA Today, Dec. 5, 2018 ("Spokesman Patrick Sandusky said the USOC is reviewing the filing to see what impact it

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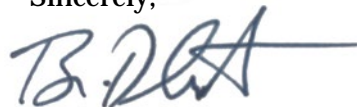
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revocation proceeding currently stayed, it must necessarily direct its reform efforts to other means to pursue a cultural change in Olympic sports. It has done so as discussed above, and it continues to do so.

At the same time, the Olympic Committee additionally recognizes the critical need to ensure the continued support of USA Gymnastics and gymnasts currently training for the 2020 Olympics in Tokyo and other international competitions upcoming. During the pendency of the stay, the Olympic Committee continues to devote substantial work, finances, and other resources to USA Gymnastics for training funds and other athlete safety and support programs including as outlined in the various agreements between the Olympic Committee and USA Gymnastics. Regardless of developments in the coming months in USA Gymnastics' litigation or bankruptcy proceedings, or the Olympic Committee's revocation process, the Olympic Committee is committed to ensuring that America's gymnasts, including those headed to Tokyo, have a safe and supportive environment to achieve their competitive goals.

The Olympic Committee appreciates the opportunity to provide this additional information regarding the revocation proceeding and the effects of USA Gymnastics' bankruptcy filing. We continue to have discussions with your staff regarding your letter's request for documents, and we stand ready to address any additional questions or concerns that you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. D. Smith", with a long horizontal line extending from the end of the signature.

Brian D. Smith

cc: The Honorable Ron Wyden

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has on the Section 8 proceedings."); Will Graves, *USA Gymnastics Files for Bankruptcy after Sex-abuse Scandal*, Associated Press, Dec. 5, 2018 ("USOC spokesman Patrick Sandusky said the committee is reviewing the filing's potential effect on decertification.").